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Homeland Security

United States
Coast Guard



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DEPARTMENT OF HOMELAND SECURITY

U. S. COAST GUARD

STATEMENT OF

REAR ADMIRAL JOHN E. CROWLEY, Jr.

ON THE

MARITIME TRANSPORTATION AMENDMENTS OF 2004

BEFORE THE

SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION

COMMITTEE ON TRANSPORTATION INFRASTRUCTURE

U. S. HOUSE OF REPRESENTATIVES

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Introduction

Good morning, Mr. Chairman and distinguished members of the Subcommittee. Thank you for providing this opportunity to talk with you about the Maritime Transportation Amendments of 2004. This is the second consecutive year that the Subcommittee has invited the Coast Guard to appear to discuss our authorizing legislation. We appreciate this opportunity to tell the story of the men and women of the Coast Guard, and to assist the Committee in crafting this critical piece of legislation for the Coast Guard and the American people.

As the members of this Subcommittee are well aware, the Coast Guard is a military, multi-mission, maritime service. We were all reminded of the dangers our men and women face, being part of one of the five armed services of the United States, by the loss last week in Iraq of one of our own, Damage Controlman Third Class Nathan B. Bruckenthal, from Smithtown, New York. While we grieve his loss, we take inspiration from his example of commitment and dedication to the Coast Guard and our Nation.

The Coast Guard is the lead Federal agency for Maritime Homeland Security, a vital and grave responsibility following September 11th. At the same time, we have continued to maintain the high levels of performance long expected of us in our other mission areas such as fisheries enforcement, search and rescue, and marine environmental protection.

As Vice Admiral Barrett, our Vice Commandant, testified before you last week, although the men and women of the Coast Guard are long accustomed to doing more with less, it is our collective duty to properly equip those at the tip of the spear with the tools needed to accomplish their mission. The Coast Guard Authorization Act is an important part of that effort, and provides new and improved tools designed to help the Coast Guard accomplish its many missions.

I would like to highlight some of the key provisions.

Law Enforcement Authority

In the aftermath of September 11th 2001, the Coast Guard's port security activities have increased significantly. A number of statutes, such as the Ports and Waterways Safety Act and the Espionage Act, give the President or the Secretary, and by delegation, the Coast Guard, broad

¹ RADM Crowley appears before the Committee on behalf the Commandant to testify on USCG policy and programs relevant to the Administration's proposed Coast Guard Authorization Act of 2004. He does not appear or offer testimony in his capacity as the Judge Advocate General of the Coast Guard.

authority to protect waterfront facilities and other shore installations. This authority includes establishment of safety and security zones and searches and seizures of property while enforcing those zones. Additionally, the Maritime Transportation Security Act directed the Secretary to establish Maritime Safety and Security Teams with shore-side responsibilities. However, there is no express authority for a Coast Guard member to arrest a person who commits a Federal offense on shore. Under current law, a Coast Guard member who detects a violation of Federal law during an authorized shore-side patrol must detain the suspect and wait until another Federal law enforcement agent arrives and makes an arrest, unless that Coast Guard member has been cross designated or deputized by another Federal agency. If a court later found that a detention by a Coast Guard member was for too long a period of time, it could void the arrest and suppress any evidence obtained. Additionally, the Coast Guard member could face allegations of unlawful arrest with potential personal liability.

A similar situation exists for the authority for carrying a firearm. Although authority for a Coast Guard member to carry a firearm in the performance of official duties is inherent within the Coast Guard's status as an armed service, there is no express statutory authority to do so while enforcing domestic laws.

The Administration's proposal, developed in close cooperation with the Department of Justice, addresses both of these shortfalls in current statute by giving Coast Guard members clear authority to arrest for violations of Federal law, and clear authority to carry a firearm in the performance of official duties. The authority would be exercised under guidelines to be jointly developed by the Attorney General and the Secretary of Homeland Security. Last year, we submitted a proposal to give Coast Guard members general Federal arrest authority. After discussions with the Subcommittee staff regarding concerns over mission creep, we revised the provision, limiting it to maritime facilities and transits to and from those facilities. To reinforce the authority's nexus to maritime security, this year's proposal would amend the new Title 46 port security chapter rather than Title 14, general Coast Guard authorities. This authority would allow the Coast Guard to better accomplish its existing missions. It would not create any new missions, nor expand our existing missions, but simply provide a better tool to accomplish them.

The second part of this provision would allow, but not require, State and local law enforcement personnel to make warrantless arrests for felony violations of Coast Guard security zone regulations. In most ports, State and local authorities have overlapping or concurrent jurisdiction over many actions that would constitute a violation of a Coast Guard security zone. Additionally, laws in many States authorize State officers to arrest for violation of Federal law. However, some State officers have questioned their authority to enforce a Coast Guard security zone if a violation is not also a violation of State law. This amendment will provide State and local law enforcement personnel the authority to detain and, if necessary, arrest those suspected of violating a Coast Guard security zone regulation. It will remove the possibility of State or local officers facing the question of "detention tantamount to arrest" in the limited circumstances when the actions violate a Federal order but do not violate State law. Since the Coast Guard's resources are limited, State and local authorities provide vital assistance to the Coast Guard and are force multipliers in enforcing security zones nationwide. A similar proposal was submitted last year to grant State and local officers arrest authority under the Espionage and Magnuson Acts. The Committee expressed Federalism concerns and the Administration revised this provision accordingly to narrow it to State and local authority to enforce duly promulgated Coast Guard security zones, a duty which many of these law enforcement personnel are already performing under State law. We also added a specific clause to make clear that the new provision does not affect other existing powers.

These provisions would clarify our law enforcement authority ashore and allow State and local law enforcement agencies to help us by enforcing Coast Guard security zones. The authorities will help protect America by leveraging scarce resources and partnering with local law enforcement, and have been carefully considered by all elements of the Administration.

Inspection Of Towing Vessels

While new authorities to help the Coast Guard carry out our expanded homeland security mission are critical, we believe that no less critical are enhanced authorities in the Coast Guard's traditional mission areas. One such vital and ongoing mission area is maritime safety. To enhance maritime safety the Administration's bill includes a proposal to allow the Secretary to implement mandatory inspection requirements and a safety management system for towing vessels to reduce casualties.

This section would enhance maritime safety in two significant ways. First, it would reduce casualties due to structural, equipment, and maintenance failures by making towing vessels subject to Coast Guard inspection. Second, it would reduce casualties caused by human error and other human factors by allowing the Secretary to establish an appropriate safety management system for towing vessels.

According to the U.S. Army Corps of Engineers, 5,150 towing vessels owned by approximately 1,200 firms operate in U.S. waters. From 1994 to 2001, Coast Guard data indicates that towing vessel casualties resulted in approximately 150 fatalities and discharge of over four million gallons of oil. Analysis of these casualties indicates that some were caused by structural or equipment failures, but many were due to human error. Members of the Committee no doubt recall, in 1993, the towboat M/V Mauvilla struck the Big Bayou Canot railroad bridge, causing the derailment of Amtrak's Sunset Limited and the death of 47 passengers and crew. Following that accident, some towing vessel owners voluntarily adopted safety management systems to improve performance and reduce accidents. These voluntary measures have significantly improved towing vessel safety, but casualties resulting in injury, death, and environmental damage continue to occur. A prime example includes the incident involving a towing vessel that spilled 55,000 gallons of fuel oil into Buzzards Bay last April. This section would allow the Secretary to implement mandatory inspection requirements and a safety management system for towing vessels to reduce these casualties.

It is also worth noting that the American Waterways Operators, a group representing a large portion of the towing vessel industry, has expressed to the Coast Guard its support for this proposal.

Continuing Priorities

When he appeared before you at the Coast Guard and Maritime Transportation Act of 2003 hearing last year, Admiral Collins identified his and the Administration's priorities for Coast Guard Authorization legislation. We appreciate the Committee's willingness to work with us to advance those priorities. As discussed above, we have resubmitted some of those provisions after changing them to address concerns raised by the Committee.

I'd also like to briefly mention three provisions that are included in last year's bill that you are about to conference with the Senate. The Administration has expressed its position on these provisions in Views Letters on both the House and Senate bills, but I thought it important to

mention them here as well. First, the provision that would require submission and approval of foreign vessel security plans. The Department strongly objects to the House version of this provision because of our concerns that it would violate our international obligations, invite reciprocation from foreign governments, thus potentially undermining national security, and prove a significant resource drain on the Coast Guard's efforts with critical elements of homeland security and other non-homeland security missions. Second, the provision raising the Coast Guard's officer cap. Although we have grown significantly, especially since September 11th, the authorized number of officers has not been increased since 1993. Enacting only a one-year waiver would make it difficult or impossible to manage the Coast Guard officer corps in a long-term manner and would adversely affect the Coast Guard's ability to plan to meet our many operational requirements in future years. And, third, the provisions amending the Oil Pollution Act of 1990. We appreciate inclusion of some of the Administration's requests and ask the Committee consider the additional Administration proposals: to allow the Coast Guard to access the Oil Spill Liability Trust Fund (OSLTF) Emergency Fund for Federal enforcement costs related to oil spills; to clarify that certain costs of adjudicating oil spill claims may be drawn from the OSLTF; and to allow recovery of Federal enforcement costs.

In addition, the Department opposes Section 219 of the House-passed bill, which by providing for direct recommendations to Congress by the Commandant of the Coast Guard raises constitutional concerns related to the President's authority to manage the Executive Branch. The Department also notes our support of the President's budget request for Fiscal Year 2005 which we believe provides the Coast Guard the necessary resources to fulfill our missions.

Conclusion

America and the Coast Guard face many challenges in the maritime arena. We strive every day to carry out our homeland security missions, maintain a high level of performance of our traditional missions, and retain and expand our skilled workforce. The Administration's proposed Coast Guard Authorization Act reflects a careful balance between these priorities and builds upon the existing foundation to help the Coast Guard maintain operational excellence across all mission areas. On the enclosed document, I have listed and described all the provisions of the Administration's Bill, which hopefully you will find useful in your consideration of the bill.

Thank you for the opportunity to testify before you today. I will be happy to answer any questions you may have.

§ 201 (H.R. 4251 § 201) - ENFORCEMENT

- This proposal would amend the port security chapter of Title 46 USC to give Coast Guard members clear authority to carry firearms while performing official duties and authority to arrest for violations of Federal law while performing official duties on maritime facilities and during transits to/from maritime facilities.
- This proposal would also allow, but not require, State/local law enforcement officers to make warrantless arrests for violations of security zone regulations issued by Coast Guard officials.

§ 202 (H.R. 4251 § 202) – IN REM LIABILITY FOR CIVIL PENALTIES

- This proposal would establish *in rem* liability for civil penalties imposed under the port security chapter of Title 46, U.S. Code or under the Espionage/Magnuson Act (50 USC 191).
- It would allow the Secretary to arrest a vessel to ensure payment of a civil penalty or require the vessel owner to obtain a bond or other surety for payment of the penalty. It would also allow the Secretary to refuse or revoke the vessel's clearance.

§ 203 (H.R. 4251 § 203) – DELEGATION OF PORT SECURITY AUTHORITY

This proposal would expressly authorize the President to delegate authority to the Secretary of Homeland Security to issue port security regulations under the Espionage/Magnuson Act (50 USC 191).

§ 204 (H.R. 4251 § 204) – NOTIFICATION OF DEFICIENCIES

This proposal would remove the requirement that the Coast Guard notify a vessel owner in writing of defects discovered during a Coast Guard inspection, and ensure that the vessel owner is responsible for promptly correcting any discrepancies.

§ 205 (NOT IN H.R. 4251) – INSPECTIONS AND EXAMINATIONS

This proposal would:

- Remove rigid inspection requirements and allow the Secretary to establish an inspection cycle that is tailored to a vessel's condition and operating history.
- Allow the Secretary to extend the inspection interval for inspected vessels by up to 36 months;
- Allow the Secretary to issue a certificate of compliance for foreign tank vessels for a period of up to 36 months;
- Extend the period of inspection for tank vessels from 1 year to 3 years;
- Give the Secretary discretion to revoke or suspend a certificate or inspection or compliance if a defect does not substantially affect a vessel's safety; and
- Remove the requirement that crew accommodations be examined monthly.

§206 (H.R. 4251 § 103) – CONFIDENTIAL INVESTIGATIVE EXPENSES

This change will allow the Coast Guard Investigative Service (CGIS) and the Coast Guard National Intelligence Element to more effectively carry out their authorized missions using confidential informants and operations by removing the 1974 cap on such expenditures. H.R. 4251, § 103 increases the cap from \$15,000 to \$45,000 each fiscal year.

§207 (H.R. 4251 § 205) – DRUG TESTING REPORTING

This section will require Federal Agencies operating public vessels employing Coast Guard credentialed mariners to report all positive drug tests or drug test violations to the Coast Guard for possible action on the credentials held by the mariner.

**§208 (H.R. 4251 § 206) – JUDICIAL REVIEW OF NATIONAL TRANSPORTATION
SAFETY BOARD FINAL ORDERS**

This section clarifies the Coast Guard's authority to appeal National Transportation Safety Board (NTSB) final orders in maritime cases.

§209 (H.R. 4251 § 207) – INSPECTION OF TOWING VESSELS

This section would enhance maritime safety in two significant ways:

- It would reduce casualties due to structural, equipment, and maintenance failures by making towing vessels subject to Coast Guard inspection.
- It would reduce casualties caused by human error and other human factors by allowing the Secretary to establish an appropriate safety management system for towing vessels.

§301 (H.R. 4251 § 101) – CONTINGENT EXPENSES

The Administration's proposal would make reception and representation funding subject to funds appropriated for such purposes, without a statutory ceiling. H.R. 4251 § 101 raises the limit on contingent expenses from \$7,500 to \$50,000.

**§302 (H.R. 4251 § 102) – MAXIMUM SERVICE IN AN ACTIVE STATUS FOR RESERVE
REAR ADMIRALS**

This section will allow a reserve officer selected for rear admiral or rear admiral (lower half) to serve a full four years in an active status while also maintaining precedence based upon an administrative date of rank that does not create an entitlement to pay and does not reduce the time during which the officer may serve in an active status following actual promotion to rear admiral (lower half).

§303 (NOT IN H.R. 4251) – COAST GUARD EXCHANGE SYSTEM

This proposal would amend section 487 of Title 14 to provide parity with the Department of Defense exchange systems. It would allow the Coast Guard to continue to use funds generated by its vending facilities to support its non-appropriated fund activities by requiring it to be treated as authorized under Title 10 for purposes of the Randolph-Sheppard Act.

§304 (NOT IN H.R. 4251) – COAST GUARD YARD

This proposal would assure the preservation of the Yard and other specialized industrial facilities. This provision authorizes the Coast Guard Yard and other specialized facilities to enter into public-private partnerships.

**SECTIONS IN H.R. 4251 NOT PROPOSED BY THE
ADMINISTRATION IN ITS CY 2004 BILL**

H.R. 4251 § 208 – WESTLAKE CHEMICAL BARGE DOCUMENTATION

This provision provides the Secretary authority to issue a certificate of documentation with coastwise trade endorsement to numerous barges.

H.R. 4251 § 209 – CONVEYANCES

This provision requires the Commandant to transfer CG44345 to the city of Ludington, Michigan and a decommissioned “Balsam Class” 180-foot cutter to CAS Foundation, Inc. if certain conditions are met.

H.R. 4251 § 210 – AUTHORITY TO SETTLE

This provision, proposed in the CY03 Administration Bill, provides authority to settle OPA 90 claims less than \$500,000 without referral to the Attorney General. The Attorney General must approve in writing settlements for claims in excess of \$500,000.